



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Francis L. Daniel
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO VIRGINIA BEACH GENERAL HOSPITAL dba Sentara Virginia Beach General Hospital

Registration number 60021

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1307.D, §10.1-1309, §10.1-1316.C, and §10.1-1184 between the State Air Pollution Control Board and Virginia Beach General Hospital, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.
3. "Boilers" means external combustion steam generating units.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality.

6. "Residual oil" means liquid fuel which meets the American Society for Testing and Materials specification for numbers 4, 5, or 6 fuel oil.
7. "Order" means this document, also known as a Consent Order.
8. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
9. "CFR" means Code of Federal Regulations.
10. "NSPS" means Standards of Performance for New Stationary Sources as promulgated in 40 CFR Part 60.
11. "Permit" means Stationary Source Permit To Install and Operate, which includes designated equipment subject to NSPS.
12. "Regulations" means Virginia Regulations for the Control and Abatement of Air Pollution (9 VAC 5-80-10 et seq.).

SECTION C: Findings of Fact and Conclusions of Law

1. Virginia Beach General Hospital, certified to do business in Virginia, and its affiliates, partners, subsidiaries, and parents, owns the facility dba Sentara Virginia Beach General Hospital located at 1060 First Colonial Road, Virginia Beach, VA.
2. On May 2, 2005 TRO received an air permit application dated April 19, 2005. The application addressed installing and operating a new 12.25 million Btu per hour natural gas and number 4 residual oil fired boiler at the Sentara Virginia Beach General Hospital (the "facility"). DEQ files show the facility had existing air permits dated March 8, 1984 and June 19, 1997 that did not include the new boiler.
3. The April 19, 2005 air permit application indicated the new boiler was rated with a maximum heat input greater than 10 million Btu per hour and using liquid fuel (oil), therefore, a Permit is required pursuant to the Regulations and 40 CFR 60 Subpart Dc NSPS Regulations.
4. Correspondence to DEQ from Sentara Virginia Beach General Hospital dated July 19, 2005 reported that the new boiler would be started up on August 22, 2005. Subsequent correspondence dated July 29, 2005 reported that the boiler had been delivered on-site but not mechanically or electrically connected and not capable of being started up or operated, during June 2005.
5. On July 28, 2005 DEQ issued a Stationary Source Permit to Modify and Operate the new boiler to Sentara Virginia Beach General Hospital for the facility.

6. 9 VAC 5-80-1120(A)(Article 6) of the Regulations states: “No owner or other person shall begin actual construction, reconstruction, or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source.”
7. 9 VAC 5-80-1110 (C)(Article 6) of the Regulations states: “‘Begin actual construction’ means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.”
8. 9 VAC 5-80-1110(C)(Article 6) of the Regulations states: “‘Stationary source’ means any building, structure, facility or installation, which emits any regulated air pollutant.”
9. 9 VAC 5-80-1220 (Article 6) “Existence of permit no defense” of the Regulations states: “The existence of a permit under this article shall not constitute defense to a violation of the Virginia Air Pollution Control Law or the regulations of the board and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.”
10. 9 VAC 5-80-1100(C)(Article 6) of the Regulations states “The provisions of this article do not apply to any stationary source, emissions unit or facility that is exempt under the provisions of 9 VAC 5-80-1320.”
11. 9 VAC 5-80-1320(B)(Article 6) of the Regulations states: “Facilities as specified below shall be exempt from the provisions of this article as they pertain to construction, modification, reconstruction or relocation.”
12. 9 VAC 5-80-1320(B)(1)(b)(Article 6) of the Regulations states: “Using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.”
13. The capacity and fuel of the facility’s new boiler, 12.25 million Btu per hour and capable of being fired by liquid fuel, is not exempt and is subject to Virginia Regulations for the Control and Abatement of Air Pollution.
14. 9 VAC 5-80-1100(E)(Article 6) of the Regulations states: “An affected facility subject to Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 shall not be exempt from the provisions of this article...”
15. 9 VAC 5-50-400 (Article 5) of the Regulations states; “The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (NSPSs) as promulgated in 40 CFR Part 60 and designated in 9 VAC 5-50-410 are, unless indicated otherwise, incorporated by reference into the regulations...”

16. 9 VAC 5-50-400 (Article 5) of the Regulations “‘Designated standards of performance’ [includes] Subpart Dc, Small Industrial-Commercial-Institutional Steam Generating Units, 40 CF 60.40c through 60.48c (industrial-commercial-institutional steam generating units which have a heat input capacity of 100 million Btu per hour or less, but greater than or equal to 10 million Btu per hour).”
17. The facility’s new boiler, 12.25 million Btu per hour heat capacity, is not exempt and is subject to NSPS as designated in 9 VAC 5-50-410 of the Regulations.
18. DEQ alleges that Sentara Virginia Beach General Hospital violated the Regulations by construction of the new NSPS boiler without an air permit.
19. DEQ issued Sentara Virginia Beach General Hospital a Notice of Violation (NOV) on August 2, 2005 advising of the above facts and applicable regulatory and statutory citations.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316.C, orders Sentara Virginia Beach General Hospital, and Sentara Virginia Beach General Hospital voluntarily agrees, to pay a civil charge of \$2,800.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," shall indicate Sentara Virginia Beach General Hospital’s Federal Identification Number, and shall be sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Sentara Virginia Beach General Hospital, for good cause shown by Sentara Virginia Beach General Hospital, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Sentara Virginia Beach General Hospital by DEQ on August 2, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Sentara Virginia Beach General Hospital admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Sentara Virginia Beach General Hospital consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Sentara Virginia Beach General Hospital declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2-4000 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Sentara Virginia Beach General Hospital to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Sentara Virginia Beach General Hospital shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Sentara Virginia Beach General Hospital shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Sentara Virginia Beach General Hospital shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility

of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Sentara Virginia Beach General Hospital. Notwithstanding the foregoing, Sentara Virginia Beach General Hospital agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Sentara Virginia Beach General Hospital. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Sentara Virginia Beach General Hospital from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Sentara Virginia Beach General Hospital voluntarily agrees to the issuance of this Order. Dec. 2, 2005 JLB

And it is so ORDERED this day of Nov. 30, 2005.

Francis L. Daniel
Francis L. Daniel, Regional Director
for Robert G. Burnley, Director
Department of Environmental Quality

Sentara Virginia Beach General Hospital voluntarily agrees to the issuance of this Order.

By: J. M. [Signature]
Date: Nov. 30 2005

Commonwealth of Virginia

City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 30 day of November, 2005, by Jeffrey M. Garber, who is

Facilities Manager (title) of Sentara Virginia Beach General Hospital, on behalf of the Hospital.

Sheilene W. Thomas
Notary Public

My commission expires: 2/29/08